



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2023-0175; FRL- 11053-02-R2]

Approval and Promulgation of Implementation Plans; New York; Emission Statement Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) submitted by the New York State Department of Environmental Conservation (NYSDEC) for purposes of enhancing an existing emission statement program for stationary sources in New York State. The SIP revision consists of amendments to regulations in New York's Codes, Rules and Regulations (NYCRR) applicable to the emission statements. These provisions establish electronic reporting requirements for annual emission statements filed by facilities subject to Title V operating permits of the Act beginning in 2022 (for calendar year 2021 emission reporting). The Emission Statement rule also improves the EPA's and the public access to facility-specific emission related data. This action is being taken in accordance with the requirements of the Clean Air Act (Act or CAA).

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA-R02-OAR-2023-0175. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Controlled Unclassified Information (CUI) (formally referred to as Confidential Business Information (CBI)) or other information whose disclosure is

restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Ysabel Banon, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, telephone number (212) 637-3382, or by email at banon.ysabel@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. Background

On October 4, 2023 (88 FR 68529), the EPA published a Notice of Proposed Rulemaking that proposed to approve a State Implementation Plan (SIP) revision submitted by the NYSDEC on March 21, 2022, for purposes of enhancing an existing Emission Statement program for stationary sources in New York, with a state effective date of December 18, 2020.

The SIP revision was submitted by NYSDEC to satisfy the ozone nonattainment provision of the Act and allows NYSDEC to more effectively plan for and attain the national ambient air quality standards (NAAQS). The purpose of 6 NYCRR Subpart 202-2, "Emission Statements," is to establish the requirements for annual emission statements filed by facilities subject to Title V operating permits under the Act. These requirements are set forth in EPA's Air Emission Report Requirements rule (AERR). *See* 40 CFR 51 Subpart A. The SIP revision establishes electronic reporting requirements for annual emission statements filed by facilities subject to Title V operating permits of the Act beginning in 2022 (for calendar year 2021 emission reporting).

The specific details of NYSDEC's SIP submittal and the rationale for the EPA's approval action are explained in the EPA's proposed rulemaking and are not restated in this final action. For this detailed information, the reader is referred to the EPA's October 4, 2023, proposed rulemaking. *See* 88 FR 68529.

II. Public comments and EPA responses

In response to the EPA's October 4, 2023, proposed rulemaking on NYSDEC's SIP revision, the EPA received three supportive comments during the 30-day public comment period. The specific comments may be viewed under Docket ID Number EPA-R02-OAR-2023-0175 on the <https://regulations.gov> website.

Comment 1

One commenter indicated that by enacting policies such as this, the NYSDEC can better regulate the major sources of air pollution and therefore move us toward achieving the NAAQS. Implementing an electronic submission system for major polluters will impose more responsibility on them to meet these emission requirements, especially if these companies are fined for not doing so. Additionally, the commenter suggested that this annual record be made available to the public.

Response 1

The EPA acknowledges the commenter's support of the EPA's proposed rule. Title 6 NYCRR, Chapter III, Part 202, Subpart 202-2.4(j) indicates that the facilities may be subject to enforcement actions, including monetary fines for incomplete and inaccurate emission statements. The commenter can review it at the EPA Docket ID number EPA-R02-OAR-2023-0175. The EPA also recognizes the commenter's request for the EPA to make the records publicly available. The public can access the annual emission records on NYSDEC's website www.dec.ny.gov/chemical/125566.html#point.

Comment 2 & 3

Two additional public comments were received, which were supportive of the EPA's proposed approval of NYSDEC's SIP revisions. The commenters indicated that the revisions to the SIP improve air quality.

Response 2 & 3

The EPA acknowledges the commenter's support of the EPA's proposed rule.

III. Final Action

The EPA is approving a SIP revision submitted by NYSDEC on March 21, 2022, for purposes of enhancing an existing Emission Statement program for stationary sources in New York. The SIP revision consists of amendments to Title 6 NYCRR, Chapter III, part 202, subpart 202-2, "Emission Statements," with a state effective date of December 18, 2020.

Based on the EPA's review, the Emission Statement rule contains the necessary applicability, compliance, enforcement, and reporting requirements for an approvable emission statement program.

IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the 6 NYCRR Part 202, Subpart 202-2, "Emission Statements," regulation described in the amendments to 40 CFR part 52 as discussed in Section I. of this preamble. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 2 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by the EPA into that plan, are fully federally enforceable

under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

¹ 62 FR 27968 (May 22, 1997).

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and it will not impose substantial direct costs on tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those

resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The NYSDEC did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the Stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter,

Reporting and recordkeeping requirements, Sulfur oxides, and Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Lisa Garcia,
Regional Administrator,
Region 2.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION
PLANS**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart HH—New York

2. In §52.1670, in the table in paragraph (c), revise the entry for “Title 6, Part 202, Subpart 202-2” to read as follows:

§52.1670 Identification of plan.

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(c) * * *

EPA-APPROVED NEW YORK STATE REGULATIONS AND LAWS

State citation	Title/subject	State effective date	EPA approval date	Comments
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Title 6, Part 202, Subpart 202-2	Emission Statements	12/18/2020	[insert date of publication in the Federal Register]	• EPA approval finalized at [insert Federal Register citation] .
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[FR Doc. 2023-28343 Filed: 12/27/2023 8:45 am; Publication Date: 12/28/2023]